

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

D.B. Civil Special Appeal (Writ) No.1460/06
In

S.B. Civil Writ Petition No.2054/1998
Shri Narain & Ors. Vs. State of Raj. & Ors.

Date of Judgment : 2nd April, 2007

HON'BLE THE CHIEF JUSTICE MR.S.N.JHA

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri K.K. Mehrishi Sr. Advocate with
Shri Sanjay Mehrishi for appellants.
Shri Bharat Vyas, Addl. Advocate General
for respondents.

(Per-Hon'ble Mr. Mohammad Rafiq, J.)

REPORTABLE

This appeal is directed against the judgment dated 29.11.2006 passed by the learned Single Judge whereby the writ petition of the appellants challenging the judgment of the Assistant Collector, Jaipur dated 10.4.1992 and the Board of Revenue dated 20.1.1997 was dismissed.

We have heard Shri K.K. Mehrishi, learned Senior Advocate for the appellants

and Shri Bharat Vyas, learned Additional Advocate General for the respondents.

Factual matrix of the case is that the predecessors-in-title of the appellants filed a declaratory suit alongwith an application seeking temporary injunction in the Court of Assistant Collector, Chaksu, Camp Court Sanganer on 29.12.1989 against respondent State of Rajasthan and respondent no.4 Nathu. The Assistant Collector however by his order dated 24.9.91 dismissed the suit as well as the application for temporary injunction. Aggrieved therefrom, they filed an appeal before the Revenue Appellate Authority, Jaipur. The Revenue Appellate Authority by its judgment dated 29.10.91 allowed the appeal filed by the appellants and remanded the matter back to the Court of Assistant Collector. The

Assistant Collector again by his judgment dated 10.4.92 dismissed the aforesaid revenue suit filed by the appellants. When the appellant again filed the appeal before the Revenue Appellate Authority, the Authority by its judgment dated 13.7.92 this time decreed the revenue suit filed by the appellants. Feeling aggrieved thereby, the State of Rajasthan and the Jaipur Development Authority filed two separate appeals before the Board of Revenue. The Board of Revenue by its judgment dated 20.1.1997 while setting aside the judgment of the Revenue Appellate Authority allowed the said appeals and dismissed the revenue suit filed by the plaintiff-appellants. The review petition filed by the appellants was also dismissed by the Board of Revenue by its judgment dated 7.7.1997. It was

against these judgments that the appellants filed writ petition before the learned Single Judge which was also dismissed by judgment dated 29.11.2006.

The case set up by the plaintiffs in the plaint as originally filed in the First Revenue Court was that the lands comprising in former Khasra No.94/1, 94/3 and 86/2 of which the present Khasra Nos. were Khasra No.135 measuring 8 Bigha 5 Biswa and Khasra No.136 measuring 31 Bigha 7 Biswa, in all 39 Bigha 12 Biswa situated in Village Paldi Meena, Tehsil Sanganer, District Jaipur, were in their cultivatory possession since the time of the Jagirdars. The plaintiff No.1 to 6 had half share in the said land whereas the plaintiff No.7 had half share. Due to mistake on the part of the subordinate staff of the Revenue / Settlement

Department, the land has been wrongly entered as pasture (charagah) land. On account of it, the functionaries of the State are bent upon to dispossess the plaintiffs from the disputed land. It was contended that the defendant Nathu, who is respondent no.4 herein, was their Hali (Agricultural labourer) and his name appeared in the revenue records, but in fact the plaintiffs are in possession of the disputed land. He was therefore impleaded as proforma respondent but no relief was sought against him. The plaintiffs submitted certified copy of the khasra Girdavari of the disputed land from Samvat-Year 2013 to 2019. It was on the basis of these pleadings that the prayer for declaration of the plaintiffs as the khatedar-tenant of the suit lands and correction of the entries in terms of such

declaration was made and simultaneously prayer for issuing injunction order was also made.

The State of Rajasthan contested the suit and denied the averments made in the plaint. Though the possession of the plaintiffs was not specifically denied, but it was asserted that the disputed land was entered as charagah land in the revenue records.

Shri K.K. Mehrishi, the learned Senior Advocate for the appellants argued that the learned Single Judge has dismissed the writ petition filed by the appellants without discussing their case on merits and without at all considering the legal points raised before him. He argued that the learned Single Judge has misconstrued and misapplied the judgment of the Hon'ble Supreme Court in Sadhana

Lodha Vs. National Insurance Co. Ltd. reported in (2003) 3 SCC 524, which judgment had no application to the facts of the present case. He argued that the learned Single Judge failed to appreciate that the Board of Revenue completely omitted to consider the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (for short 'the Jagirs Act') and had thereby committed a jurisdictional error constituting an error apparent on the face of the record which required intervention by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. It was argued that the learned Single Judge did not take notice of the fact that as per the jurisdiction vested in the Board of Revenue under section 224 of the Rajasthan Tenancy Act, 1955, the

Board could interfere in the judgment of Revenue Appellate Authority only on the grounds specified therein, namely, if the impugned judgment was contrary to law and if it has failed to determine some material issue of law or uses having the force of law, further if there is any further substantial error or defect in the procedure provided under the said Act or lastly if the decision was contrary to evidence on record. None of these parameters were attracted, therefore, the Board committed an error of law by reversing the judgment of the Revenue Appellate Authority.

Shri K.K. Mehrishi laid much emphasis on the argument that disputed lands were jagirdari lands which stood resumed by operation of law as contained in Section 9 of the Jagirs Act with effect

from 1.11.1958. The Settlement Department was obliged in law to repeat the entries of earlier jamabandies and no change in those entries could be made by the Settlement Department on its own without there being an order of the competent authority. Since the land in the present case were being cultivated by the plaintiffs as tenants on the date of resumption of the disputed land which fact was not even challenged by the State of Rajasthan in its written statement, the Settlement Department had no authority to change the classification of lands from cultivable land to that of pasture land without any order from the competent authority. The entries with regard to pasture land were therefore null and void and were liable to be declared as such. He argued that learned Single Judge failed

to consider that the Board of Revenue committed a further illegality by holding that it was necessary for the plaintiffs to prove that they were in possession of the disputed land as tenant on 15.10.1955 on which the Rajasthan Tenancy Act came into force and further that since the plaintiffs have failed to prove their possession on the said land they were not entitled to relief. He submitted that the Board of Revenue has also committed an error as when the disputed lands were jagirdari lands and plaintiffs were claiming tenancy rights in the disputed lands under section 9 of the Jagirs Act, there was no question of requiring them to prove their possession on such land on the date of the commencement of the Rajasthan Tenancy Act, 1955. The Board of Revenue further erred in law by holding that the

plaintiffs had invented a new case first time before the Revenue Appellate Authority by contending that they were in possession of the disputed land even prior to the year 1956 and also paid rent of the same. The Board of Revenue also misconstrued and misinterpreted the entries of Khasra Girdavari from Samvat year 2013 to 2036 and the rent receipts dated 2.1.52, 15.1.53 and 3.12.54. The learned Single Judge failed to take note that the Board had misread and misconstrued the patta Ex.1 dated 15.1.1956 and wrongly held that since the khasras nos. of the disputed lands were not mentioned in the said patta, the same was of no avail to the plaintiffs. Such a finding was perverse and erroneous in the face of the fact that the patta sufficiently establishes the identity of

the disputed lands. Apart from the fact that the plaintiffs were able to prove so by oral evidence of PW-3 Bhonrilal and PW-5, Ram Narain, the khatedars of the neighbouring lands have also proved that the plaintiffs had always been cultivating the said land since the times of the jagirdars. There was thus no vagueness in the said patta. The learned Board of Revenue erred in law in entertaining the appeal filed by the Jaipur Development Authority even though it was not a party in the original revenue suit. The Board of Revenue therefore committed a procedural illegality in entertaining the appeal of the JDA without first impleading it as party in the main suit.

Shri K.K. Mehrishi also emphasized on the point that when the Jagirdar had not deposited the revenue records of the

land relating to Samvat Year 2012 in the Tehsil, it was not possible for the plaintiffs to produce the copy of the Khasra Girdavri of that year and in these circumstances no adverse inference could have been drawn against the plaintiffs for non-production of the copies of the revenue records relating to Samvat Year 2012. The approach taken by the Board of Revenue on this aspect was therefore wholly perverse. Shri K.K. Mehrishi lastly submitted that after the commencement of the Rajasthan Tenancy Act with effect of 15.10.1955, the pasture land can be demarcated only in accordance with the provisions of Rules 4 to 7 of the Rajasthan Tenancy (Government) Rules, 1955. He submitted that appellants are in possession of the disputed lands since Samvat Year 2008-09 as Khatedar tenants

and have been exercising rights of ownership in such land to the knowledge of the State Authorities. He therefore submitted that the judgment of the Board of Revenue as also of the learned Single Judge be set aside. Shri K.K. Mehrishi in support of his arguments relied on the judgment of the Hon'ble Supreme Court in Kishore Kumar Khaitan & Anr. Vs. Praveen Kumar Singh, (2006) 3 SCC 312, Surya Dev Rai Vs. Ram Chander Rai & Ors., (2003) 6 SCC 675, Idan Vs. State of Raj. & Anr., RRT(2001)(1) 244, Sadhana Lodh Vs. National Insurance Co. Ltd. & Anr., (2003) 3 SCC 524, Mishri Lal Vs. Ram Khilari, RRD (1987) 202. He therefore prayed that the writ petition be allowed.

On the other hand, Shri Bharat Vyas, the learned Additional Advocate General appearing for the respondents

argued that the judgments passed by the learned Board of Revenue did not suffer from any such legal error as could justify interference by this Court under Article 226 and 227 of the Constitution of India. He submitted that the learned Single Judge has rightly dismissed the writ petition by holding that the essential feature of a writ of certiorari is not appellate jurisdiction and the High Court will not in exercise of its function under Article 227 of the Constitution, construe evidence and re-open findings of facts. Learned Single Judge therefore rightly applied the ratio of the judgment of Hon'ble Supreme Court in *Sadhana Lodh* (supra). Shri Bharat Vyas argued that there was absolutely no basis on which the appellants could get khatedari rights in the land in dispute. The plaintiffs could not prove that they

were in possession of the land in dispute at the time of commencement of Rajasthan Tenancy Act, 1955. Moreover, the plaintiffs themselves did not set up a case on the basis of Section 9 of the Jagirs Act but their case throughout was that they acquired khatedari rights by virtue of Section 15 of Rajasthan Tenancy Act. According to the plaintiffs, the land in dispute came to them on the basis of patta dated 15.1.56 but the patta was too vague to be accepted as a patta. This patta which has been placed on record as Annexure-3 does not indicate the location of the land and its identity. The patta does not even give the exact measurement of the land. The Revenue Appellate Authority has accepted the appeal of the plaintiffs by giving cryptic and erroneous findings. He submitted that the Board of

Revenue has rightly entertained the appeal of the State of Rajasthan as also the Jaipur Development Authority. Jaipur Development Authority is a functionary of the State. Besides, the land in dispute fell within the Jaipur region as defined by Section 2(8) of the JDA Act, 1982 therefore the land having vested in it, it had a legitimate say in the matter. Shri Bharat Vyas submitted that Board of Revenue has passed a just and correct order. He submitted that even if the written statement as originally filed on behalf of the State Government was not happily worded and did not specifically dispute the factum of the possession of plaintiffs, it was nonetheless for the plaintiffs to prove their case on their own strength rather than depending on the deficiencies in the pleadings of the

defendants. When the Board having scrutinized the entire material has come to a definite finding that there was no basis for the plaintiffs to claim that they were in possession of the land in dispute at the time of commencement of the Rajasthan Tenancy Act or had remained in continuous possession of the land thereafter, no fault can be found with the findings recorded by the learned Board of Revenue. Even otherwise, conclusions arrived at by the Revenue Appellate Authority are not supported by any evidence available on record. He therefore prayed that the writ petition be dismissed.

We have given our earnest consideration to the rival arguments advanced by learned counsel for the parties and perused the material available

on record.

We would at the outset deal with the argument advanced on behalf of the appellants that the appeal filed by the JDA before the Board of Revenue was not maintainable and therefore judgment passed in such appeal cannot be sustained in law. We do not see substance in the argument because it was not the JDA alone which had filed the appeal but the Government also filed appeal and therefore even if the appeal of the JDA were not to be there, the judgment, which has been passed, could have been passed in the appeal by the Government. This does not therefore make any difference about the validity of the judgment. We are therefore not inclined to uphold the argument and it is accordingly rejected.

The Board of Revenue in its

judgment has clearly noted that the plaintiffs had not come up with the specific case as to from when they were in possession of the disputed land. All that they have stated is that they were in possession of such land forever and since the times of Jagirdars. The fact about the so called patta given to the appellants on 15.1.56 was nowhere referred to in the plaint. The possession of the father of the plaintiffs Shri Govind Ram was not therefore taken to have been proved at the time of resumption of the Jagirdars. Admittedly, the Board from the copies of the Jamabandi filed before it found that such land was recorded as pasture land from beginning and notice was given to the father of the plaintiffs by Gram Panchayat sometime in the year 1959 treating him to be trespasser for ejectment. The Board

noted that the possession of the individual in 'khasra parivartansheel' is recorded only by treating such person as a trespasser. The plaintiffs neither pleaded nor proved that they were in possession of the land at the time of commencement of the Rajasthan Tenancy Act in Svt. 2012. Even the Khasra Girdawari of the Svt. 2013 to 2026 produced on record indicated that the land was recorded as the government land in which possession of the plaintiffs was shown as trespassers. The so-called patta dated 15.1.1956 which the plaintiff produced also does not prove their case because the author of the patta Shri Anandkar Paundrik himself stated that he was not sure as to this patta was issued with regard to which land and to whom. The perusal of the patta Annexure-3 also does not clearly indicate the description and

location of the land.

The Board of Revenue has recorded a categorical finding and in our view rightly so, that the Revenue Appellate Authority has made out a new case for the appellants when it found the possession of the appellants proved on the land in dispute before the commencement of the Rajasthan Tenancy Act solely on the basis of three receipts of the land revenue dated 2.1.52, 15.1.53 and 3.12.54 and the aforesaid patta dated 15.1.56. To test the correctness of the findings recorded by the Board of Revenue, we have also gone through the judgment passed by the Revenue Appellate Authority (Annexure-7). The Revenue Appellate Authority, in the first place, has remained heavily influenced by the pleadings of the State in para 3 of its written statement filed in the revenue suit where the possession of the

plaintiffs was acknowledged by the defendants. It should be noted that government in spite of being allowed several opportunities failed to adduce evidence and therefore its evidence was closed on 31.3.92 and the matter was finally heard on 2.4.92. It is only at the appellate stage before the Revenue Appellate Authority that the government produced certain documents by reference to application under Order 41 Rule 21 read with 151 CPC which formed the basis for all its arguments. The Revenue Appellate Authority then proceed to examine the case of the plaintiffs in the context of provisions contained in section 15 of the Rajasthan Tenancy Act, 1955 according to which those in possession of the land at the time of commencement of that Act i.e. on 15.10.55 were entitled to be conferred

with the khatedari rights. It based its findings as to possession of the plaintiffs on the factum of three receipts of the payment of the land revenue and the patta and the admission of the State in its written statement to the Revenue suit. The Revenue Appellate Authority has rather given a halfhearted finding that this much of evidence proved that the petitioner was more or less (Kamobash) in possession of the land in dispute on 15.10.55 when the Rajasthan Tenancy Act commenced and used to pay the land revenue to the ex-jagirdar. The Revenue Appellate Authority also based its conclusion on the averments of the defendants in their written statements that the land in dispute was not presently being used as pasture land and was in cultivatory possession of the plaintiffs. Now all these factors, in our

considered opinion, did not prove conclusively the fact with regard to possession of the plaintiffs on the land in dispute on 15.10.1955.

The revenue suit, as per the own admission of the appellants, was filed by them on 29.12.89 and if on that date, may be under a wrong notion or advise the written statement that was filed by the defendants stated that the petitioners were in cultivatory possession of the land in dispute and such land was not being used as a pasture land, this could hardly prove the fact that this was on admission of the fact that the plaintiffs were in possession of the land in dispute on the date of commencement of the Rajasthan Tenancy Act on 15.10.1955. The so called patta which the petitioner sought to rely also did not prove the fact that it was

the same land with respect of which the plaintiffs were claiming khatedari rights. In fact, the very author of the patta Shri Anandkar Paundrik when examined as the witness in the Court failed to stand the scrutiny of the cross-examination when he stated that he was not sure as to this patta was issued with regard to which land and to whom. A perusal of the patta also does not indicate as to the exact location of the land or its identity or even its description. The present dispute is with regard to 39.12 bighas of land whereas the patta indicates the measurement of the land to be 85 bighas. When the patta itself is in doubt, the so called receipts of the land revenue which are respectively dated 2.1.52, 15.1.53 and 3.12.54 cannot on their face value, be accepted as pertaining to the land with regard to

which the khatedari rights were being claimed by the appellants. Even otherwise, mere payment of land revenue does not by itself prove khatedari rights of the plaintiffs over the concerned land. It required cogent and reliable evidence to prove the possession of the plaintiffs on the land in dispute as on the date of the commencement of the Rajasthan Tenancy Act.

It would be of significance to note that the plaintiffs sought to develop the case regarding conferment of the khatedari rights upon them by virtue of Section 15 of the Tenancy Act at a much later stage. But this cannot be accepted because no such case was ever set up by them in the plaint which they originally filed before the Court. Copy of the plaint is on record as Annexure-1 and perusal of it indicates that hardly any pleadings were made with

regard to plaintiff's possession over the land in dispute, either prior to or at the time of commencement of the Rajasthan Tenancy Act. The plaint does not even state as to since when the plaintiffs were in possession. Their sole case was that they were in possession of the land since long and that the land in dispute has wrongly been recorded as pasture land and therefore relevant entries be corrected and it should be declared that such land was in khatedari rights of the plaintiffs. What is more, the Revenue Appellate Authority itself was not certain about possession of the plaintiffs on the land in dispute as on 15.10.1955 when the Rajasthan Tenancy Act commenced, when it in para 18 of the judgment recorded the finding that the plaintiffs were, more or less, in possession of the land in

dispute. We therefore do not find any error or infirmity in the judgment passed by the learned Board of Revenue in reversing the judgment of the Revenue Appellate Authority.

An effort was made by Shri K.K. Mehrishi learned Senior Advocate for the appellants to show that khasra girdawari of the Svt. 2012 could not be produced to prove possession of the plaintiffs as on 15.10.55 because the same was not available in the records of the respondents. Shri K.K. Mehrishi sought to substantiate this argument from the communication dated 19.3.97 (Annexure-21) addressed to one of the appellants by the Assistant Land Records Officer of the office of the Land Records Commissioner, Jaipur wherein it was stated that the khasra girdawari of Svt. 2008 to 2012 was not

available in their records. Now such an application for obtaining certified copies of the khasra girdawari was filed as late as on 13.3.97 whereas the original revenue suit itself was filed way back on 29.12.1989. Apparently this effort was made by the plaintiffs to supply deficiencies at a very late stage and we cannot rule out the possibility of causing disappearance of the relevant khasra girdawari at this belated stage but in view of the findings which we have otherwise recorded, we do not wish to comment on that any further. But this argument, in our considered view, also does not merit acceptance.

Coming now to the argument advanced by the learned counsel for the appellants on the strength of Section 9 of the Jagirs Act that they acquired such rights when

the jagirs were resumed on 1.11.58 and since the plaintiffs were cultivating the disputed land as tenant, they had acquired the khatedari rights by virtue of Section 9, supra, we find that the Revenue Appellate Authority had upheld the claim of the appellants only on the basis of devolution of khatedari rights upon them by virtue of Section 15 of the Rajasthan Tenancy Act accepting them to be in possession of the land in dispute as on 15.10.55 and not by virtue of Section 9 of the Jagirs Act. The plaintiffs had accepted the judgment of the Revenue Appellate Authority and had no grievance thereagainst, even though this was one of the arguments of the plaintiffs since beginning. When the plaintiffs accepted the judgment of the Revenue Appellate Authority by not challenging it any

further, that would in law mean that they accepted the finality thereof. Even then, we have proceeded to examine this argument to put a quietus to this otherwise old matter. Argument in substance is that the disputed land being jagirdari land stood resumed on 1.11.58 in the government and since on that date the plaintiffs were in cultivatory possession of the same, they acquired khatedari rights under Section 9 of the Jagirs Act. Section 9 of the Jagirs Act, provides that every tenant in a jagir land who at the commencement of this Act is entered in the revenue records as a Khatedar, pattedar, khademdar or under any other description implying that the tenant has heritable and full transferable rights in the tenancy, shall continue to have such rights and shall be called a khatedar tenant in respect of such land. The pre-

requisite condition for claiming khatedari rights on the strength of Section 9 of the Jagirs Act is that the person claiming such rights should prove the fact that he was entered in the revenue record as "khatedar, pattedar or khademdar or under any other description implying" and that he had full transferable rights in the tenancy. The plaintiffs in the present case did not either specifically plead such a case and they did not at all prove any of the requirement of Section 9, therefore, their arguments raised belatedly at this stage particularly when such argument has not found favour with the Revenue Appellate Authority cannot be accepted.

Yet another argument which the learned counsel for the appellants has raised is that the learned Assistant

Collector was not justified in refusing to grant khatedari rights to the plaintiffs on the premise that Section 16 of the Rajasthan Tenancy Act itself has barred conferring khatedari rights in regard to pasture land and further that the land could not be recorded as pasture land without their being an order to this effect by the competent authority for change of the nature of the land. On perusal of the records, we have found that the land was recorded as pasture land way back in 1959 corresponding to Svt. 2014 and it was at that time that a notice for ejectment was served upon the father of the plaintiffs treating him to be a trespasser. This argument would not be available to the plaintiffs in a revenue suit filed 30 years thereafter in the year 1989.

Coming now to the case laws relied on by learned counsel for the appellants, we find that the judgments cited with reference to Article 227 of the Constitution of India are of no help to the appellants because we on scrutiny of the entire evidence and material on record found that the judgment passed by the Revenue Appellate Authority was based on perverse findings and erroneous application of law on the subject. It should therefore necessarily follow that the Board of Revenue was perfectly justified in upsetting that judgment and therefore the learned Single Judge also did not commit an error in holding that the order of Board of Revenue did not suffer from any legal infirmity so as to warrant interferences by this Court in exercise of its supervisory powers under

Article 227 of the Constitution of India. The judgments passed by learned Single Judge in Idan (supra) was a case in regard to competence of the Settlement Department for changing the kind of the land and conferring khatedari rights on a person. Ratio of that case is also distinguishable on facts and would not apply to the present case in view of the discussions made hereinabove. Correctness of the view taken in the judgment of the learned Single Bench in the case of Mishri Lal (supra) as to the nature of records of rights such as khasra girdawari and jabamandi also cannot be doubted but that case is again distinguishable on facts because in that case the plaintiff had claimed khatedari rights since inception of the suit on the basis of his possession at the time of commencement of the Tenancy

Act and proved the same. In view of the findings recorded hereinabove, therefore, this judgment is also distinguishable and would not apply to the present case.

In our considered view, therefore the judgment passed by the Board of Revenue does not suffer from any such infirmity as may be described as an error apparent on the face of the record so as to justify interference by this Court in exercise of its power of supervisory jurisdiction under Section 226 and 227 of the Constitution of India. Therefore, the judgment of learned Single Judge also in our view does not suffer from any such legal infirmity.

In view of what has been discussed above, we do not find any merit in this appeal and the same is accordingly dismissed with no order as to costs.

(Mohammad Rafiq), J.

(S.N.Jha), CJ.

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